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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
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**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

No. 05-0820

**Charles B Burton,
Bar No. 002346**

HEARING OFFICER'S REPORT

Respondent

(Assigned to Hearing Officer 7V,
Stanley R. Lerner)

An agreement was entered into between the State Bar of Arizona, through undersigned counsel, and Respondent, Charles B. Burton, through his counsel, Nancy A. Greenlee. It was submitted pursuant to Rule 56(a), Ariz R.Sup.Ct., and the Guidelines for Discipline by Consent issued by the Disciplinary Commission of the Arizona Supreme Court.

Respondent conditionally admitted that his conduct violated Rule 42, Ariz.R Sup.Ct., specifically ERs 1.5, 1.16, 5.1(a) and 5.3. The parties agreed that the appropriate disposition is a censure, and payment of the costs of these proceedings. The Complainant has been notified of this consent agreement pursuant to Rule 52(b)(3), Ariz.R Sup Ct.

The parties have indicated that they understand that their agreement is subject to review and acceptance by the Hearing Officer, the Disciplinary Commission, and the Supreme Court. A Joint Memorandum in Support of

1 Agreement by Consent was filed contemporaneously with the Tender of
2 Admissions

3
4 References to the attached tabbed exhibits are self-explanatory, are attached
5 to the Tender of Admissions, and incorporated by reference. References to the
6 Complaint and Answer, which have been filed in this matter and which, therefore,
7 are not attached hereto will be referred to as "Complaint para. 'X' " or "Answer
8 para. 'Y.' "

9
10 **FACTS**

11 1 At all times relevant, Respondent was a lawyer licensed to practice law
12 in the state of Arizona having been first admitted to practice in Arizona on
13 September 20, 1969. (Complaint para 1; Answer para 1)

14
15 2 Respondent was a Senior Managing Partner at Burton and Leather and
16 Associates ("the Firm"). (Complaint para. 2; Answer para 2)

17
18 3. As a Managing Partner for the Firm, Respondent was responsible for
19 business generation, client intake, client complaints with regard to billing matters
20 and refunds of fees paid to the Firm. (Complaint para. 3; Answer para. 3)

21 **COUNT ONE (File No. 05-0820/Bohinc)**

22
23 4. Ms. Tara Bohinc met with Respondent on or about October 22, 2004,
24 and discussed retaining the firm to represent her in divorce proceedings. (Ms.
25 Bohinc's charge against Respondent dated May 11, 2005, including a letter from

1 Respondent to Ms. Bohinc dated October 22, 2004, Bates stamped SBA006, Ex.

2 1)

3
4 5. Respondent informed Ms. Bohinc that his partner, James Leather ("Mr
5 Leather") would be the attorney representing her in the divorce proceedings.
6 Were this matter to proceed to a hearing, Ms Bohinc would claim that Respondent
7 informed her that Mr. Leather's hourly rate was \$160.00 per hour Respondent
8 would testify that he told her that Mr. Leather's rate would be \$190 00 per hour, as
9 reflected in the retainer agreement (Complaint para 6, 8, Answer para. 6, Ex 1,
10 Bates stamped page SBA004)
11

12
13 6. After her initial meeting with Respondent, Ms. Bohinc had no reason to
14 believe that Mr Leather would not continue to represent her throughout the
15 divorce proceedings (Complaint para. 8; Answer para. 8)

16
17 7 On or about October 25, 2004, Ms Bohinc met with Respondent's
18 assistant, Anita Rodriguez, signed a fee agreement and paid a \$1,250 retainer for
19 the Firm's representation. However, Ms. Bohinc refused to initial the space
20 adjacent to Mr. Leather's hourly rate of \$190.00 per hour since she claimed that
21 she had earlier been advised that Mr. Leather's hourly rate was \$160 00 per hour
22 (Complaint para. 4; Answer para. 4, Ex. 1 Bates stamped pages SBA004 and 014-
23 020)
24
25

1 8 On or about October 26, 2004, Ms Bohinc met with Mr Leather, who
2 was the Firm's Managing Partner for Legal Services. Ms. Bohinc clarified that she
3 did not wish to have her case transferred to another attorney within the Firm, as
4 she was willing to pay the \$160.00 per hour rate quoted by Respondent for Mr.
5 Leather's representation. (Complaint para 7, 8; Answer para 7, 8)
6

7 9. On or about November 5, 2004, an employee of the Firm informed Ms
8 Bohinc that her case had been transferred to an associate within the Firm Ms.
9 Bohinc asked to speak with Mr. Leather about the matter. However, the employee
10 told Ms. Bohinc that she could not schedule an appointment with Mr. Leather
11 since he was no longer her attorney. (Complaint para. 9; Answer para 9; Response
12 from Respondent's partner James Leather in File No 05-0819, dated August 12,
13 2005, Ex. 2, Bates stamp page SBA050, 071 and 086)
14

15 10. The change in who was to be the primary attorney in the case was made
16 without any prior consultation with Ms. Bohinc, and without Respondent's
17 knowledge. (Complaint para. 10; Answer para 10)
18

19 11. On or about November 8, 2004, Ms Bohinc contacted the Firm, advised
20 she no longer needed their services, and requested a refund of her retainer
21 (Complaint para. 11; Answer para. 11.)
22

23 12 Besides Ms Bohinc's initial consultation with Respondent and an in-
24 office consultation with Mr Leather, no partner or associate of the firm performed
25

1 any work on Ms Bohinc's legal matter. (Complaint para 19; Ex 1 Bates stamped
2 pages SBA002; 004-005; and 007-010)

3
4 13. When Ms. Bohinc requested a refund of her retainer, an employee of the
5 Firm informed Ms Bohinc that only the partners could determine whether and
6 how much of a refund she would receive. (Complaint para. 12, Answer para. 12)

7
8 14. On or about November 16, 2004, not having received her refund, Ms
9 Bohinc again contacted the Firm and was told that someone would look into her
10 request (Complaint para 13; Answer para. 13; Ex 1 Bates stamped page
11 SBA004)

12
13 15. On or about November 20, 2004, Ms. Bohinc sent a certified letter to the
14 Firm requesting a refund of her advance fee amount. (Complaint para. 14; Answer
15 para. 14; Ex 1 Bates stamped pages SBA004, 011 and 013)

16
17 16. Mr. Leather signed the acceptance receipt on November 26, 2004
18 (Complaint para 15, Answer para. 15, Ex. 1 Bates stamped page SBA013)

19
20 17. Ms. Bohinc received no response to her certified letter of November 22,
21 2004, from Respondent, Mr. Leather, or anyone else within the Firm regarding her
22 refund. (Complaint para. 15; Answer para. 15; Ex. 1 Bates stamped page
23 SBA004)

1 18 On or about January 25, 2005, Ms. Bohinc sent a second certified letter
2 to the Firm regarding a refund of her advance fee amount. (Complaint para 16;
3 Answer para 16; Ex. 1 Bates stamped pages SBA004 and 012)
4

5 19 Ms Bohinc again received no response to a second certified letter sent
6 to the Firm on or about January 25, 2005. (Complaint para. 17; Ex. 1 Bates
7 stamped page SBA004; Ex. 2 Bates stamped page SBA087, letter dated January
8 29, 2005, from the firm failing to enclose a refund check or address Ms. Bohinc's
9 request for a refund)
10

11 20. Between February and March 2005, Ms. Bohinc spoke to the Firm's
12 staff and left multiple messages about her refund. Ms. Bohinc received a variety
13 of excuses and reasons for the Firm's failure to provide a refund as she requested.
14 (Complaint para. 18; Ex. 1 Bates stamped page SBA004; Ex. 2 Bates stamped
15 page SBA050)
16

17 21. Although the Firm twice received notice that the Firm's services were
18 terminated, the Firm continued to bill Ms. Bohinc a \$50.00 "administrative fee"
19 during the months of November and December 2004, and January 2005.
20 (Complaint para. 20, Answer para. 20. (See Ex. 1 Bates stamped pages SBA007-
21 010, Ex. 2 Bates stamped page SBA058)
22
23

24 22 A billing invoice dated November 9, 2004, bearing the letterhead
25 "Charles B. Burton Assistant to Senior Managing Partner" and "James L Leather

1 Legal Assistant to Managing Partner of Litigation” shows that Ms Bohinc was
2 billed for an office conference at the rate of \$195.00 per hour, instead of the
3 \$190 00 noted in the fee agreement. (Complaint para 21; Answer para 21, Ex. 2
4 Bates stamped page SBA054)

6 23. A billing invoice dated January 31, 2005, bearing the letterhead
7 “Charles B Burton, Esq. Senior Managing Partner” and “James L Leather, Esq.
8 Managing Partner of Litigation” shows that Ms Bohinc was billed for review of
9 her file and a letter by James L. Leather. Ms. Bohinc was, again, charged at the
10 rate of \$195.00 per hour. (Complaint para. 22, Answer para. 22; Ex. 2 Bates
11 stamped page SBA058)

13 24. The same billing invoice dated January 31, 2005, shows that Ms. Bohinc
14 was billed \$375.75 for 5 hours related to a “final review of file, calls to/from
15 client; refund retainer balance per fee agreement & close” by James Leather. The
16 \$375 75 billed amount equates to an hourly rate of \$751.50. (Complaint para 23;
17 Ex. 2 Bates stamped page SBA058)

19 25. As of May 11, 2005, Ms. Bohinc had yet to receive a refund of any
20 amount from the Firm. (Complaint para. 24, Answer para. 24)

22 26 By letter dated June 24, 2005, the State Bar requested that Respondent
23 provide a response to Ms. Bohinc’s allegations. The letter specifically requested
24 that Respondent address ERs 1.4, 1.5, 1.15, 1 16 and 5.3, Rule 42 Ariz.R Sup Ct.,
25

1 as well as Rules 43 and 44, Ariz.R.Sup.Ct. (Complaint para 25, Answer para. 25,
2 Ex. 3, Bates stamped pages SBA021-022)

3
4 27. In an undated response, Respondent provided an extensive description
5 of various personnel problems, the Firm's billing practices and the Firm's
6 experiences with fee arbitration (Complaint para. 26; Answer para. 26; Ex. 4,
7 Bates stamped pages SBA035-038)

8
9 28 In his undated response, Respondent acknowledged that Ms. Bohinc
10 terminated the Firm's services and requested a refund of her unused fees.
11 (Complaint para 27, Answer para. 27, Ex 4, Bates stamped pages SBA035-038)

12
13 29 In his undated response to the State Bar's inquiry, Respondent failed to
14 explain the reasons for keeping Ms Bohinc's retainer when the Firm had done no
15 legitimate work. *Id*

16
17 30. Respondent admitted that he and Mr Leather must approve the final
18 disposition of "proper refund requests" but claimed not to know what happened to
19 a \$500.00 refund check made payable Ms Bohinc. (Complaint para 28; Answer
20 para 28, Ex. 4, Bates stamped pages SBA035-038)

21
22 31. In his undated amendment to the response, received by the State Bar on
23 August 23, 2005, Respondent stated that a full refund of Ms Bohinc's \$1,250.00
24 retainer was being made Respondent included a copy of a check dated August 23,
25 2005, payable to Ms Bohinc, but did not provide a copy of any letter indicating

1 the transmittal of the original check. (Complaint para. 30; Answer para. 30; Ex. 5,
2 Bates stamped pages SBA032-034)

3
4 32 As of November 25, 2005, Respondent had not sent Ms Bohinc a
5 refund check in the amount of \$1,250 00 (Complaint para. 31; Answer para. 31;
6 Ex 6, response from Tara Bohinc dated November 28, 2005, Bates stamped page
7 SBA041)

8
9 33. Respondent conditionally admitted and the Hearing Officer hereby finds
10 that Respondent violated: a) **ER 1.5**, Rule 42, Ariz R.Sup.Ct , by charging an
11 unreasonable amount for expenses, i.e. a monthly \$50.00 administrative fee, in
12 Ms Bohinc's legal matter, particularly for months after Ms Bohinc had already
13 discharged Respondent's firm; b) **ER 1.16**, Rule 42, Ariz.R.Sup.Ct , by failing to
14 withdraw from the representation when the Firm was discharged by Ms Bohinc;
15 upon termination of the representation, by failing to refund Ms Bohinc's portion
16 of her advance fee payment that was not earned; and by failing to ensure that Ms
17 Bohinc's refund check was mailed to her following her termination of the Firm, c)
18 **ER 5.1(a)**, Rule 42, Ariz R.Sup Ct., by failing to make reasonable efforts as the
19 managing partner of the Firm to ensure that the firm had in effect measures giving
20 reasonable assurance that all lawyers in the firm conform to the Rules of
21 Professional Conduct, by failing to promptly comply with Ms. Bohinc's
22 reasonable requests for information and the refund of her advance fee, by failing
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1 to take reasonable remedial action, as the managing partner of the Firm, for Mr
2 Leather's conduct at a time when the consequences could have been avoided; and
3 by acquiescing in and ratifying Mr. Leather's refusal to mail the initial refund
4 check to Ms. Bohinc of \$1,250 00, in or about August 2005, with knowledge of
5 Mr. Leather's specific refusal to refund the advanced fees paid by Ms Bohinc, d)
6 **ER 5.3**, Rule 42, Ariz.R.Sup.Ct , by failing to make reasonable efforts, as the
7 managing partner of the Firm, to ensure that the Firm had in effect measures
8 giving reasonable assurance that the conduct of non-lawyer employees was
9 compatible with Respondent's professional obligations.
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11

12 **ADMISSIONS**

13
14 Respondent admitted that his conduct, as set forth above, violated Rule 42,
15 Ariz.R.Sup.Ct , ERs 1 5, 1.16, 5.1(a) and 5.3. Respondent's admissions were
16 tendered in exchange for the form of discipline stated below
17

18 **SANCTION**

19 Respondent and the State Bar agreed that based on the conditional
20 admissions disciplinary sanction shall be imposed.
21

22 THEREFORE, it is ordered as follows:

- 23 1. Respondent shall be censured for violations of Rule 42,
24 Ariz R.Sup Ct., specifically ERs 1.5, 1.16, 5.1(a) and 5.3.
25

1 2 Respondent shall pay the costs incurred by the State Bar in
2 connection with these proceedings. A statement of costs and expenses by the State
3 Bar is attached as Exhibit 7.
4

5 By entering into this agreement, Respondent waived his right to a formal
6 disciplinary hearing to which he would otherwise be entitled pursuant to Rule
7 57(1), Ariz.R.Sup.Ct., as well as his right to testify and present witnesses on his
8 behalf at such a hearing. Respondent further waived all motions, defenses,
9 objections or requests that he has made or raised, or could assert hereafter,
10 provided that the conditional admissions and stated forms of discipline are
11 approved. Respondent has received the assistance of counsel in these proceedings
12 and has been represented by Nancy A. Greenlee and acknowledges that he has
13 read this agreement and received a copy of it. Respondent submitted to the Tender
14 of Admissions by Consent freely and voluntarily, and without coercion or
15 intimidation, and was aware of the Supreme Court Rules with respect to
16 discipline
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20 The Tender of Admissions and Agreement for Discipline by Consent was
21 submitted to a hearing officer. Respondent understood that the Hearing Officer
22 may request an evidentiary hearing in this matter and the Hearing Officer held an
23 evidentiary hearing. Respondent further understood that the Disciplinary
24
25

1 Commission must approve the agreement and that this matter will become final
2 upon Judgment and Order of the Arizona Supreme Court.

3
4 The Hearing Officer files this report with the Disciplinary Commission
5 recommending acceptance of the sanctions.

6
7
8 **DATED** this 19th day of November, 2007.

9
10 Stanley R. Lerner /es
11 Stanley R. Lerner
12 Hearing Officer 7V
13
14
15

16 Original filed with the Disciplinary Clerk
17 of the Supreme Court of Arizona, this 19th
18 day of November, 2007.

19 Copies of the foregoing mailed this 19th
20 day of November, 2007, to:

21 Nancy A. Greenlee
22 Attorney and Counselor at Law
23 821 E. Fern Drive North
24 Phoenix, AZ 85014
25

1 David L. Sandweiss
2 Bar Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 200
5 Phoenix, AZ 85016-6288

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By CLSD